IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RENTAL HOUSING ASSOCIATION **Plaintiff,** v. CITY OF SEATTLE **Defendant.**	NO. 17-2-13662-0 SEA ORDER GRANTING CITY OF SEATTLE'S CROSS MOTION FOR SUMMARY JUDGMENT AND DENYING RHA'S CROSS MOTION FOR SUMMARY JUDGMENT **[Clerk's Action Required]**

THIS MATTER came before the undersigned judge on cross motions for summary judgment from Plaintiff Rental Housing Association ("RHA") and Defendant City of Seattle ("City"). In its motion, RHA argues that Ordinance 125222 ("Ordinance") adopted by the Seattle City Council on December 12, 2016 violates RCW 35.21.830 and is unconstitutional under the Washington State Constitution and the United States Constitution as it violates the substantive due process and the taking clause.

The City rejects RHA's claims and argues that RHA has not overcome its burden to show that the statute is in violation of RCW 35.21.830 or that it is unconstitutional per Article I of the Washington State Constitution or the Fifth Amendment to the United States Constitution.

The Court reviewed the parties' pleadings with all attached exhibits as follows:

1. RHA's Motion for Summary Judgment;
2. Declaration of Josh Whited in Support of RHA's Motion for Summary Judgment;
3. City's Opening/Response on Cross Motions for Summary Judgment;
4. RHA's Response/Reply on Cross Motions for Summary Judgment;
5. Declaration of William Shadbolt;
6. Declaration of Christopher Benis;
7. City's Reply on its Cross Motion for Summary Judgment;
8. RHA's Sur-Reply on Cross Motions for Summary Judgment; and
9. Pleadings and papers related to this matter on file with the Court.

The Court having heard oral argument, makes the following FINDINGS:

1. On December 12, 2016, the City Council adopted Ordinance 125222 ("Ordinance") regarding residential rental properties.

2. The Ordinance made changes and additions to the Seattle Municipal Code (SMC) Chapter 7.24. At issues here are sections 7.24.035, 7.24.036 and 7.24.038 of the SMC, which were added by the Ordinance:

- Section 7.24.035 limits the scope and amount of upfront charges required at the beginning of the tenancy to: non-refundable move-in charges, security deposits, pet security deposits, and the last month's rent. It caps the amount of the non-refundable move-in fees to ten percent of the monthly rent for the unit and sets a cap on the total amount of the upfront fees and deposits. This section also provides that the tenant may pay security deposits and non-refundable move-in fees in monthly installments i.e. 6 monthly installments on a 12 month lease.

- Section 7.24.036 provides that a tenant may elect to pay last month's rent in 6 consecutive installments on a 12 month lease.

- Section 7.24.038 limits the pet damage deposit to 25 percent of the monthly rent for the unit.

- The landlord is prohibited from imposing a fee or charging interest if a tenant elects the payment plan option under Sections 7.24.035 and 7.24.036.

3. RHA first argues that the provisions of the Ordinance individually and cumulatively constitute "controls on rent" and "regulate the amount of rent" in violation of RCW 35.21.830. RHA argues that an expanded definition of "rent" should apply to RCW 35.21.830 that would include not only the amount of the periodic (i.e. monthly) rent by the tenant, but also other required payments included in the rental agreement. RHA argues that the Ordinance is a violation of RCW 35.21.830 as it limits the scope of the move-in fees that a landlord can charge and caps the amounts of the allowed move-in fees.

RCW 35.21.830 preempts local governments from enacting any controls on rent and, also prohibits local governments from regulating the amount of rent.

RCW 35.21.830 provides:

> *The imposition of controls on rent is of statewide significance and is preempted by the state. No county may enact, maintain or enforce ordinances or other provisions which regulate the amount of rent to be charges for single-family or multiple-unit residential rental structures or sites other than properties in public ownership, under public management, or properties providing low-income rental housing under joint public-private agreements for the financing or provision of such low-income rental housing. This section shall not be construed as prohibiting any county from entering into agreements with private persons which regulate or control the amount of rent to be charges for rental properties.*

In order to decide whether the Ordinance violates RCW 35.21.830, the Court first must discern the definition of "rent" in RCW 35.21.830.

When interpreting a statute, courts examine the plain language of the statute and related statutes to discern the plain meaning. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.,* 146 Wash. 2d 1, 11, 43 P.3d 4 (2002); *HomeStreet, Inc. v. Dep't of Revenue,* 166 Wash. 2d 444, 451, 210 P.3d 297 (2009).

"In construing statutes, the primary objective is to carry out the intent of the Legislature. In the absence of a legislative definition, courts may resort to the applicable dictionary definition to determine a word's plain and ordinary meaning unless intent within the statute appears." *Am. Legion Post No. 32 v. City of Walla Walla,* 116 Wash. 2d 1, 8, 802 P.2d 784, 787 (1991); *Cannabis Action Coal v. City of Kent,* 180 Wash. App. 455, 469, 322 P.3d 1246, 1253 (2014), *aff'd,* 183 Wash. 2d 219, 351 P.3d 151 (2015).

The Court first looks at the dictionary definition of "rent". Webster's Third International Dictionary defines "rent" as periodic payments made as consideration for the use or occupancy of land. Other dictionaries also define "rent" as an agreed sum paid at fixed intervals by the tenant to the landlord for the use of property. [1]

In looking at the statutory context in which the term "rent" is used, the Court finds it instructive to examine the use of the term "rent" in the Washington Residential Landlord Tenant Act ("Act"). In a number of provisions, the Act refers to "rent" as "periodic payments". For example, RCW 59.18.080 requires the tenant to be current in the payment of "rent" before exercising any of the remedies under that section; RCW 59.18.085(2) refers to "three months' of periodic rent" as the tenant's remedy against a landlord that

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[1] *also* Merriam-Webster Dictionary - Definition of "Rent": a usually fixed periodical return made by a tenant or occupant of property to the owner for the possession and use thereof.

violates that section; RCW 59.18.090(1) allows the tenant to be discharged from the obligation to pay rent for any period after terminating the rental agreement when the landlord fails to remedy a defective condition under that provision; and RCW 59.18.110(2) provides for suspension of the tenant's obligation to pay rent until the landlord carries out his duties. These provisions clearly treat "rent" as periodic payments for the residential use of the property, and show legislative consistency of applying the "periodic payment" definition to "rent". These provisions do not suggest the inclusion of security deposits or upfront move-in fees as part of the definition of "rent".

RHA, in the alternative argues that even if the Court interprets the term "regulate the amount of rent" narrowly by applying the "periodic payment" definition to "rent", the Court should interpret the term "controls on rent" to include any and all limitations on security deposits and move-in fees.

The Court first considers the term "rent" as it appears in RCW 35.21.830. When the term "rent" is used in this statute, it is used exclusively as part of these three phrases: *"controls on rent"; "regulate the amount of rent"* and *"regulate and or control the amount of rent"*.

In considering an undefined term, the court considers the statute as a whole to give meaning to the term in harmony with other statutory provisions. *HJS Dev., Inc. v. Pierce Cty. ex rel. Dep't Planning & Land Servs.,* 148 Wash. 2d 451, 471-72, 61 P.3d 1141, 1151 (2003).

The Court finds that if the legislature meant to apply a different meaning to the definition of "rent" in "controls on rent" as opposed to the meaning of "rent" when used in "regulate the amount of rent" or "regulate and control the amount of rent", the legislature would have defined each use of the term separately and explained the intended difference. "Courts should assume

the Legislature means exactly what it says." *State v. Keller,* 143 Wash.2d 267, 276, 19 P.3d 1030 (2001). Court must consider the meaning naturally attaching to words from their context, harmonizing provisions related to the same subject. *State v. S.P.,* 110 Wash. 2d 886, 890, 756 P.2d 1315 (1988); *Keller* at 267.

The Court finds that RHA's attempt to treat "rent" differently in adjacent phrases in the same statute fails to harmonize the reading of the statute as a whole.

In the absence of the legislature attaching a different meaning to the definition of "rent", the Court applies a harmonized meaning to "rent" in RCW 35.21.830. Given that both the dictionary and the legislative context indicate that "rent" means the periodic payments made by the tenant to the landlord at fixed intervals (i.e. monthly) for the purpose of using the landlord's property, the Court applies the "periodic payment" definition to the term "rent" in RCW 35.21.830.

The Court next considers the parties' arguments regarding whether the Ordinance violates RCW 35.21.830.

The Court finds that after, applying the ordinary meaning of "rent" to the statute, RCW 35.21.830's preemption language regarding "controls on rent" and the prohibition language related to the "amount of rent" are limited to the periodic payments (i.e. monthly rent) paid by the tenant to the landlord. Other payments that a landlord may require from a tenant, such as one-time payments to secure move-in rights or as a security deposit, do not fall under the meaning of "rent". Upfront fees and deposits are considerations for the right to move in and not dependent on the length of the tenancy. Therefore, the Ordinance's regulation of such other required payments is not preempted nor prohibited by RCW 35.21.830.

Contrary to RHA's argument, the Ordinance does not force the landlords to accept a lesser amount in rent, it gives an installment payment option to the tenants for the pre-payments of the full amount of the last month's rent to the landlord.

Therefore, the Court finds that the provisions of Ordinance 125222 do not, individually or cumulatively constitute, "controls on rent" and do not regulate "the amount of rent". The Ordinance is not in violation of RCW 35.21.830.

4. RHA claims that the Ordinance, on its face, violates Article I, Section 16 of the Washington State Constitution and the Fifth Amendment to the United States Constitution because it deprives the landlord of fundamental attributes of property ownership, such as the right to possess property, exclude others, or dispose of property.

RHA's argument centers on the claim that the Ordinance bars the landlord from negotiating and bargaining for a payment arrangement of the security deposit, move-in fees and the last month's rent that best suits the landlord's interests.

Article I, section 16 of the Washington State Constitution states (in pertinent part): *"No private party shall be taken or damaged for public or private use without just compensation."* (Const. art. I § 16).

The Fifth Amendment to the United States Constitution states (in pertinent part): *"Nor shall private property be taken for public use, without just compensation."* (U.S. Const. amend V).

The Court is aware that the case law interpreting "the taking clause" is muddled, and that there is a need for clarification from a higher court. It is not the role of the trial court to resolve the inconsistencies in constitutional jurisprudence.

Here the Court looks to the four prong analysis in *Manufactured Housing Communities of Washington v. State,* 142 Wash. 2d 347, 13 P.3d 183 (2000) which was the last time that the State Supreme Court addressed this doctrine. In that case the Court held that an unconstitutional taking occurs when:

> (1) a regulation effects a total taking of all economically viable use of one's property;
> (2) the regulation has resulted in an actual physical invasion upon one's property;
> (3) a regulation destroys one or more of the fundamental attributes of ownership (the right to possess, exclude others and to dispose of property); or
> (4) the regulations were employed to enhance the value of publicly held property *Manufactured Housing,* at 355.

RHA does not claim that the Ordinance deprives landlords of all economically viable use of their properties, nor does RHA claim that the Ordinance constitutes a physical invasion of those properties. Accordingly, the first two prongs of the *Manufactured Housing* test are not met.

The Court then turns to the third prong: whether the Ordinance destroys one or more fundamental attributes of property ownership, including the right to possess, to exclude others, to dispose of property, or to make some economically viable use of the property. See *Presbytery of Seattle v. King County,* 114 Wash.2d 320, 330, 787 P.2d 907 (1990).

The Ordinance places modest limits on the scope and amount of the upfront fees, and addresses the timing, but not the amount, of the last month's rent. Under the Ordinance, the landlord

would still be entitled to collect move-in fees and deposits and receive pre-payment of the last month's rent.

While the Court finds that, insofar as these policy changes limit a landlord from rejecting an otherwise qualified tenant who seeks a payment plan option, this prohibition is nothing more than a mild restriction of the landlord's ability to dispose of his property and falls short of "destroying any fundamental attributes of property ownership". See *Margola Associates v. City of Seattle,* 121 Wash. 2d 625, 854 P.2d 23 (1993), *Guimont v. Clarke,* 121 Wash 2d 586, 854 P.2d 1, 22 (1993).

Accordingly, the third prong of the *Manufactured Housing* test is not met.

As to the fourth prong, there are no claims that this Ordinance was passed to enhance the value of public property, therefore the fourth prong does not apply to the facts of this case.

Having applied the *Manufactured Housing* test to the facts of this case, the Court finds that no unconstitutional taking of private property will result from the enforcement of the Ordinance.

5. RHA also challenges the Ordinance as a violation of Article I, Section 3 of the Washington State Constitution and the Fifth Amendment to the United States Constitution, claiming that the Ordinance is unduly oppressive and that the Ordinance does not use means reasonably necessary to achieve its purpose.

Washington State Constitution, Article I, Section 3 states (in pertinent part):

No person shall be deprived of life, liberty, or property, without due process of law." (Const. article I, §3). This language mirrors that found in the Fifth Amendment to the United States Constitution:

"No person shall be deprived of life, liberty, or property, without due process of law" (U.S. Const. amend. V).

Accordingly, the State Supreme Court has held that the state and federal substantive due process laws are coextensive. "Factors (1) and (2) indicate co-extensive state and federal protections, inasmuch as the text of Const. art. I, § 3 and the Fifth and Fourteenth Amendments to the Federal Constitution are identical... "[t]his court traditionally has practiced great restraint in expanding state due process beyond federal perimeters." *State v. Manussier,* 129 Wash. 2d 652, 679-80, 921 P.2d 473, 486 (1996).

The Court is aware that the case law applying the standard of review in a "substantive due process claim" has produced a rather murky area of case law and needs clarification.

Given that *Amurund v. Board of Appeals, 158 Wn.2d 208 (2006)* is the most recent decision of the State Supreme Court on this issue, this Court therefore applies the "rational basis" and not the "unduly oppressive" standard proposed by RHA.

Under this analysis, the court's scrutiny is relaxed and deference is given to the legislative judgment regarding the need for, and likely effectiveness of the regulatory action. See *Manussier, supra,* at 673.

In applying this analysis, the Court must examine whether the Ordinance has a reasonable relationship to a legitimate government interest. See *Armurund, supra,* at 226; *Manussier, supra,* at 673.

The Court finds that the City Council identified a rental housing and relocation crisis in the Seattle market, wherein the rapidly increasing cost of living has made it difficult to save for upfront charges and that tenants may be unable to prepay the last month's rent, security, pet deposits and other fees upfront.

The Ordinance addresses this specific rental and relocation crisis in the City of Seattle by regulating barriers posed by upfront charges. Landlords have control on the amount of rent and the upfront charges that they may impose. The Ordinance addresses the upfront charges imposed by the landlords by limiting the scope and amount of move-in fees, and allowing tenants to choose a payment plan option. The Court finds that the Ordinance addresses a specific identified problem, and that the solutions embodied in the policy have a reasonable relationship to the legitimate government objection of addressing that problem.

Accordingly the Court finds that RHA has not met its burden to show that the Ordinance violates the "due process clause" of either the Washington State or United States Constitutions.

NOW, THEREFORE, after full consideration of the Parties' arguments and submissions, and with the Court deeming itself fully advised in the premises, the Court finds that there are no genuine issues of material fact and that pursuant to CR 56 (c), the City is entitled to judgment as matter of law.

The Court hereby ORDERS that the City's Motion for Summary Judgment is hereby GRANTED and RHA's Motion for Summary Judgment is DENIED.

DATED this 19th day of September, 2018.

Judge Susan Amini